

WESTERN DIVISION  
No. 5:10-HC-2017-BC

V.

## ORDER

Mark C. Rogers (“petitioner”), a state inmate, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent has filed a motion to dismiss on grounds of successive-ness. (D.E. # 8) Before a second or successive application for habeas relief may be filed in the district court, an applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A).

On August 18, 1999, in the Superior Court, Craven County, petitioner pled guilty to attempted first-degree murder and felonious breaking or entering, and was sentenced pursuant to his plea bargain to 202 to 252 months' imprisonment. (§ 2254 Pet. at 1; Attachments) Petitioner's criminal judgment was amended on January 28, 2003 to correct the designation of attempted murder, changing it to a class B2 felony, rather than a class B1 felony as originally noted. (Id.)

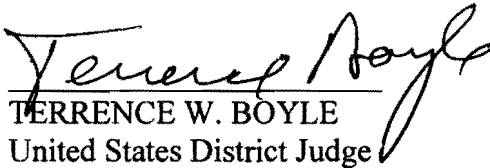
Petitioner alleges the following in his § 2254 petition: (1) that his sentencing range does not reflect that of the presumptive range for a class B-2 felony; and (2) that his sentence is erroneously not in accordance with the United States Supreme Court's decision in Blakely v. Washington, 542 U.S. 296 (2004). In addition, petitioner incorporates by reference all issues raised in the various state-court filings attached to his § 2254 petition. (See Pet.)

Petitioner previously filed a petition seeking habeas relief in this district. Rogers v. Beck, 5:04-HC-993-H (E.D.N.C. filed Dec. 23, 2004). On December 9, 2005, the Honorable Malcolm

Howard granted respondent's motion for summary judgment and dismissed petitioner's habeas petition on statute of limitations grounds. (Id., at D.E. # 8 and #9)

This court does not have jurisdiction to review the matters set forth in the current petition until authorized to do so by the United States Court of Appeals for the Fourth Circuit. 28 U.S.C. § 2244(b)(3)(A). The court specifically notes Blakely had been decided prior to the filing of the first § 2254. Accordingly, respondent's motion is ALLOWED (D.E. # 8) and petitioner's habeas claims are DISMISSED without prejudice to allow petitioner to seek authorization to file this application in the Eastern District of North Carolina. The case is CLOSED and all other pending motions are DENIED as MOOT.

SO ORDERED. This 3 day of June 2011.

  
TERRENCE W. BOYLE  
United States District Judge